

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2283 of 1995

with

SPECIAL CIVIL APPLICATIONS Nos.1795 of 1996,
6488 of 1997 & 6489 of 1997

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For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? YES. EXCEPT BRACKETED
PORTION.

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2. To be referred to the Reporter or not? NO

3. Whether Their Lordships wish to see the fair copy
of the judgement? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge?
NO

M/S. SARDAR CONSTRUCTION CO.

Versus

STATE OF GUJARAT

Appearance:

1. Civil Revision Application No. 2283 of 1995
MR GT DAYANI for Petitioner
Shri P.G. Desai, GOVERNMENT PLEADER for Respondent No. 1

2. Special Civil Application No 1795 of 1996
MR GT DAYANI for Petitioner
Shri P.G. Desai, GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision:01/05/98

JUDGEMENT :

Civil Revision Application No.2283 of 1995 and Special Civil Application No.1795 of 1996 along with Special Civil Applications Nos.6488 of 1997 and 6489 of 1997 are disposed of by this common judgment since common question of law is involved in all these applications.

2. The question for consideration is whether any dispute arising from the works contract in all the arbitration proceedings in relation to such disputes before an arbitrator, umpire, court or authority shall stand transferred to the Tribunal under the provisions of section 21 of the Gujarat Public Works Contract Disputes Arbitration Tribunal Act, 1992 ("the Act" for brevity) where before 1.1.1994 the award has been made and is pending with civil court "for making the award the rule of the Court". The question is no more res integra as it is settled by the Division Bench of this Court in State of Gujarat vs. Rajesh Builders, 1993 (2) GLR 1176. The Division Bench has held that declaration or pronouncement of the award by the arbitrator does not bring ipso facto an end to the proceedings. The finality of the arbitration proceedings obtained or achieved only when the awards are culminated into rule or decree of the court or decree is passed by the court pursuant to the award. The court said that finality can be achieved not only after completion of the proceedings before the arbitrator, but only after the award becomes rule of the court or decree is passed pursuant to the award. Thus, the phrase 'arbitration proceedings' employed in section 21 of the Act includes all the proceedings till the award is made rule of the court.

3. It is, however, contended by Shri G.T. Dayani, learned counsel for the petitioner that an important aspect of the matter has not been considered by the Division Bench inasmuch as with the conjoint reading of the provisions of the Arbitration Act, 1940 and the provisions of Gujarat Act of 1972 makes abundantly clear that all the provisions of the Arbitration Act, 1940 are not repealed in its entirety, but both the provisions of the Arbitration Act, 1940, which are inconsistent with the provisions of the Act, 1992 shall cease to apply to a dispute arising from the works contract. He has referred to the provisions of subsections 3, 5 and 6 of section 8 and also section 21 of the Act. Reading the said provisions it is submitted that the Tribunal is not empowered to pass decree in respect of the matter. This is already adjudicated by the sole arbitrator prior to coming into force of the Act of 1992, i.e. prior to 1.1.1994. On the other hand, Shri P.G. Desai, learned

Government Pleader appearing for the respondent-State submits that the inconsistency in both the acts on the question of making award is much apparent inasmuch as under subclause 6 of section 8, a departure has been made from the Act of 1940 inasmuch as that the award made by the Tribunal is deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.

4. In order to appreciate the controversy it would be appropriate to refer to some of the provisions of the Act of 1940 and the Gujarat Act of 1992. It is not in dispute that under the provisions of the Act of 1940 the award made by the arbitrator or umpire is required to be filed before the civil court and the Court may make the award rule of the Court after following necessary procedure provided under the Act of 1940. However, section 8 of the Act of 1992 provides that where any dispute has arisen between the parties to the works contract, either party shall, irrespective of whether such contract contains arbitration clause or not refer the matter within one year from the date when dispute arose. Subclause 5 of clause 8 provides that the award including interim award subject to the provisions of section 11 or 12 shall be final and binding on the parties to the dispute. Subsection 6 makes such an award a decree within the meaning of section 2 of the Code of Civil Procedure. Thus, it becomes evident that under the Gujarat Act of 1972, irrespective of existence of arbitration clause all disputes pertaining to the works contract in which a State or undertaking is a party is compulsory and of statutory nature. In fact section 13 ousts the jurisdiction of the civil court. Section 13 provides that no civil court will have jurisdiction to deal with or decide any question that the Tribunal is empowered to deal with and decide by or under this Act and no injunction will be granted by any civil court in respect of any action taken or to be taken in pursuance of the power by or under the Act. Section 21 provides that at the commencement of the Act of 1992, the provisions of the Arbitration Act of 1940 shall so far as they are inconsistent with the provisions of Gujarat Act of 1972 cease any dispute arising from a works contract and all arbitration proceedings in such dispute before an arbitrator, umpire, court or authority shall stand transferred to the Tribunal. Section 21 of the Act reads as follows :

"21. Arbitration Act to cease to apply -- The provisions of the Arbitration shall in so far as they are inconsistent with the provisions of this Act, cease any dispute arising from a works

contract and all arbitration proceedings in such dispute before an arbitrator, umpire, court or authority shall stand transferred to the Tribunal."

On a conjoint reading of both the Acts the inconsistency is apparent as already stated in the Gujarat Act of 1972. The arbitration in the matter of works where the State or a public undertaking is a party and compulsory and statute. The award is not required to be made rule of the court, but the award made by the Tribunal is deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure. In view of this, in my view, there is no substance in the contention raised by Shri Dayani, learned counsel.

CRA No.2283 of 1995 :

In this case, the award was made on 14.4.1992. The Application was filed in the Court of Civil Judge (SD), Vadodara and the proceedings were pending before the said Court on coming into force of the Act of 1992, i.e. with effect from 1.1.1992.

In view of the aforesaid, the order dated 31.8.1995 passed by the Joint Civil Judge, Senior Division, Vadodara, transferring Miscellaneous Civil Application No.200 of 1992 is upheld and the Civil Revision Application is rejected. Rule is discharged. Interim relief is vacated.

SCA No.1795 of 1996 :

In this case, the award was made on 10.4.1992. The application was filed before the Civil Court as Civil Misc. Application No.112 of 1992 on 17.6.1992. The proceedings before the Civil Court was pending on coming into force of the Act of 1992, i.e. with effect from 1.1.1992.

In view of the aforesaid there is no merit in this application and this application filed against the order of the Tribunal dated 11.12.1995 is rejected. The order of the learned Civil Judge, Senior Division, Bhavnagar transferring Miscellaneous Civil Application No.112 of 1992 to the Tribunal is upheld. The Special Civil Application is rejected. Rule is discharged.

SCA No.6488 of 1997 :

In this case, the award was made on 24.12.1992. The application was filed before the Civil Judge (SD), Ahmedabad (Rural) on 3.1.1994. Thus, on coming into

force of the Act of 1992, i.e with effect from 1.1.1992, the arbitration proceedings were pending.

In view of the aforesaid there is no merit in this Special Civil Application challenging the order of the Tribunal dated 9.7.1997, transferring the Arbitration Application No.306 of 1996. The order of the Tribunal is upheld and the Special Civil Application is rejected. Rule is discharged. Interim relief is vacated.

SCA No.6489 of 1997 :

In this case, the award was made on 14.12.1992. The application was filed before the Civil Judge (SD), Ahmedabad (Rural) on 3.1.1994. Thus, the arbitration proceedings were pending on coming into force of the Act of 1992, i.e. with effect from 1.1.1992.

In view of the aforesaid the writ petition challenging the order of the Tribunal dated 9.7.1997 is rejected. Rule is discharged. Interim relief is vacated.

FURTHER ORDER

[CRA No.2283 of 1995

The learned advocate for the petitioner submits that the petitioner intends to approach the Supreme Court and therefore, the interim relief granted by this Court may further be continued for a period of six weeks. Permission granted. The interim relief granted by this Court is further extended to a period of six weeks.

Special Civil Applications Nos.1705 of 1996, 6488 of 1997 and 6489 of 1997

The learned advocate for the petitioner submits that the petitioner intends to file appeal before the Division Bench against the order passed by this Court, and therefore, the interim relief granted may further be directed to be continued for a period of six weeks. It may be made clear that in view of the order passed by this Court to hear these Special Civil Applications along with CRA No.2283 of 1995 filed under section 12 of the Act of 1992, the matters have been heard and decided. Taking independently, in my view the writ petitions are not maintainable in view of the specific remedy available under section 12 of the Act of 1992. The question however, is left open. Considering the facts of the case, the interim relief granted is further extended for a period of six weeks.]

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